



**Northern District**

Chairman Arch Super  
Karuk Tribe

Rich Simon  
Yurok Tribe

**Central District**

Chairman Matt Franklin  
Ione Band of Miwok  
Indians

Chairwoman Glenda  
Jackson, Enterprise  
Rancheria

**Southern District**

Gerald Clarke  
Cahuila Band of Indians

Chairman Mark Romero  
Mesa Grande Band of  
Kumeyaay Indians

**Executive Director**

Will Micklin, CEO  
Ewiiapaayp Band of  
Kumeyaay Indians

December 1, 2009

Lawrence Strickling  
Assistant Secretary for Communications and Information  
Broadband Technologies Opportunity Program  
National Telecommunications and Information Administration  
U.S. Department of Commerce  
HCHB Room 4887  
1401 Constitution Ave, NW  
Washington, DC 20230

Jonathan Adelstein  
Administrator, Rural Utilities Service  
Broadband Initiative Program  
U.S. Department of Agriculture  
1400 Independence Ave, SW  
Washington, DC 20250

Re: Joint RFI–Broadband Initiatives Program and Broadband  
Technologies Opportunities Program – USDA-RUS-BIP/Commerce-  
NTIA-BTOP: Joint Request for Information (RIN: 0572-ZA01/RIN:  
0660-ZA28; Docket Number: 0907141137-91375-05)

Dear Administrator Adelstein and Assistant Secretary Strickling:

By this letter the California Association of Tribal Governments  
("CATG") electronically submits its comments on the Joint Request for  
Information on the Broadband Initiatives Program and Broadband  
Technologies Opportunities Program.

Please direct any questions of CATG to its Executive Director, Mr.  
Will Micklin at (619) 368-4382. Thank you.

Sincerely,

*Matthew Franklin*

---

Matt Franklin, CATG Board Chairman

**California Association of Tribal Governments (CATG)  
California Policy Agenda  
Recommendations to the President of the United States of America**

The California Association of Tribal Governments (CATG) fully supports the detailed recommendations outlined in the National Congress of American Indians resolution on the ARRA Broadband funds ("Effective Inclusion of Tribes in the ARRA Broadband Program," NCAI Resolution #PSP-09-026), and the detailed policy recommendations submitted by the Great Plains Tribal Chairman's Association on November 30, 2009.

The CATG also fully supports the detailed recommendations previously provided to the NTIA and RUS by the Native American Broadband Association (NABA), as described below:

**(1) PREFERENCE FOR TRIBAL PROVIDERS ON TRIBAL LANDS.** Both from a legal and from a business efficacy standpoint, Tribes should be given preference for providing services on their own lands. Depending on which points you measure most tribes begin the ARRA process at a 25-40 point deficit, with preference going to incumbents claiming to service over *our* own tribal lands. For example, the BIP continues to give existing Title II borrowers preference. Very few Tribes or Indian owned companies are Title II borrowers. Very few Title II borrowers are actually servicing our communities.

**Proposed Changes:**

- **Change Incumbency Preference BIP Title II.** The "incumbency" points currently granted to Title II borrowers should go to Title II -OR- a Tribal applicant when the coverage area is over Tribal lands.
- **Access to either BIP or BTOP:** Particularly in light of the historical issues Tribes have had with USDA the RUS funds, and the broad federal trust responsibility, Tribal applicants for Tribal lands should be able to choose either BIP or BTOP for their application.
- **Overlapping Areas.** Amend the "overlapping areas" preference from the highest point winner, to the highest Tribal point winner when its over Tribal lands.
- **Tribal Approval on Tribal Lands Required.** Any non-Tribal provider claiming they will provide service to Tribal lands must have approval from those Tribes.

**(2) SUSTAINABILITY IS MEASURED DIFFERENTLY IN INDIAN COUNTRY.** While we understand the federal government's interest in stretching its limited dollars, the criteria outlined in the NOFA perversely benefit those that have the most ability to get broadband access without federal assistance. In many instances there is not a strong profitability incentive in Indian Country, otherwise there would already be service. Tribes as government providers have a number of more creative sustainability options available to them, including tribal government subsidization, taxes, and flexibility in services to their constituents. There must be different considerations weighed on the financial aspects for Tribal projects on Tribal lands.

**Proposed Changes:**

- **Fund SUTA.** Use the flexible funds to fund the existing SUTA goals under RUS to encourage Tribal projects on Tribal lands.
- **BIP: Waive Loan-Grant Ratio Preference for Remote Projects.** Remote communities can apply for full grants, yet are still subject to a 10 point loss for the loan-grant ratio. Remote applications should be defaulted to the full 10 points.
- **BTOP: Waive Matching Requirement.** Waive the 20% matching funds requirements for Tribal remote projects on Tribal lands. There is strong precedent for waiving federal matching requirements for Tribal projects because of the federal trust obligation of federal tribal trust lands.
- **Sustainability grants.** Provide sustainability grants to Indian projects on Indian lands to help augment the sustainability requirements.

**(3) CONSULTATION/FOLLOW-UP.** It is clear from the final NOFA that little to no of the Tribal input was incorporated.

#### **Proposed Changes**

- **Tribal Prioritization.** Tribal governments should be provided an equal opportunity to provide prioritization information. There should be a separate Tribal prioritization process and Tribes should be included in the state boards doing the state prioritization.
- **Ability to Cure.** Applicants for the first round should be provided information about any technical issues with their applications and given the opportunity to cure before final decisions are made.
- **Tribal Reviewers.** Tribal projects are different. The NTIA and RUS must have Indian Country reviewers that understand the unique jurisdictional and business model issues on Indian lands.

The definition of Indian Country” is currently defined as: “(a) all land within the limits of any Indian reservation under the jurisdiction of the United States Government, notwithstanding the issuance of any patent, and, including rights-of-way running through the reservation; (b) all dependent Indian communities within the borders of the United States whether within the original or subsequently acquired territory thereof, and whether within or without the limits of a state; and (c) all Indian allotments, the Indian titles to which have not been extinguished, including rights-of-way running through the same. 18 U.S.C. § 1151.” For the purpose of this document, Indian Country is intended to also include Alaska Native Villages, Native Hawaiian Homeland, and Trust lands. This use of a criminal statute as a definition of Indian Country is inappropriate and results in potential ineligibility for many tribal governments’ tribal lands, and especially those tribal governments without a tribal land base in the State of California and Alaska. The Commission cannot use “Indian Country,” “Tribal areas,” and “Tribal lands” interchangeably unless based upon an appropriate definition. See RURAL BROADBAND REPORT at para. 31 n.54. The CATG recommends the NTIA and RUS amend their definition of tribal lands to the following definition: “The terms Tribal Lands, Indian Country, Reservation, or tribal trust lands shall mean American Indian Area, Alaska Native Area, Hawaiian Home Land (AIANAHH) as used by the US Census Bureau referring to the following types of geographic areas: federal and state American Indian reservations,

American Indian off-reservation trust land (individual or tribal), Oklahoma tribal statistical area (in 1990 tribal jurisdictional statistical area), tribal designated statistical area, state designated American Indian statistical area, Alaska Native Regional Corporation, Alaska Native village statistical area, and Hawaiian home lands.”

Finally, CATG recommends the associated activity that is the NTIA digital mapping program under the charge of the NTIA is of such important to subsequent rounds of the NOFA be addressed. (Department of Commerce, National Telecommunications and Information Administration, State Broadband Data and Development Grant Program, Docket No. 0660-ZA29, Notice of Funds Availability, 74 Fed. Reg. 32545, 32555 (July 8, 2009) (NTIA State Mapping NOFA) /the entity designated by states to receive NTIA funding for all lands within a state owned by the state, in fee, or by tribes presents a significant problem for tribes. In paragraph 58 of the *Section 706 Sixth Report NOI* the Commission recognized the dearth of information regarding broadband deployment on Tribal lands. In this same NOI the Commission acknowledged “that some state-sponsored and private mapping efforts may not encompass all areas or all providers within a particular state” while “recogniz[ing] the importance of including all rural areas, particularly Tribal lands, in federal mapping efforts.” Historical fact again shows that states have not provided intended services to tribal lands even when the recipient of funding from authorizing legislation and/or regulation that clearly intends it. CATG recommends NTIA take such measures as are necessary to ensure tribal lands are adequately and timely mapped for purposes of the NTIA-RUS BIP-BTOP NOFA applicants, which includes directing funds to tribes or inter-tribal government organizations, like CATG, to complete the digital mapping project for all tribal lands. The CATG recommends the Native American Broadband Association to NTIA-RUS for further discussion of this question.